

**F I L E D**

Clerk of the Superior Court

SEP 08 2005

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21 SUPERIOR COURT OF THE STATE OF CALIFORNIA

22 COUNTY OF SAN DIEGO

23 Coordination Proceeding Special Title  
24 (Rule 1550(b))  
25 NATURAL GAS ANTI-TRUST CASES  
26 I, II, III & IV

27 [This Document Relates to the Pipeline  
28 Cases Only]

J.C.C.P. Nos. 4221, 4224, 4226 and 4228

**STIPULATION AND [PROPOSED] ORDER  
REGARDING INITIAL TRIAL**

Trial Date: September 12, 2005

Department: 71

Coordination Trial Judge: Hon. Ronald S. Prager

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 WHEREAS, at the Status Conference in the above-captioned case on July 27, 2005  
3 ("Status Conference"), the parties, with the Court's assistance, reached preliminary agreement  
4 as to several outstanding issues with respect to the size, scope, format, and binding effect of  
5 an initial trial ("Initial Trial") in this matter based on representations made in Court regarding  
6 the size of potential claims by Plaintiffs.

7 WHEREAS, since that time, the parties have clarified the scope of Plaintiffs' claims  
8 and have reached a new compromise as to the scope of an Initial Trial, which is set forth  
9 below.

10 WHEREAS, in light of the large number of Motions *in Limine*, and to accommodate  
11 the oral arguments for such motions and to allow sufficient time to address the effect of such  
12 rulings upon the Initial Trial, the Court also determined that the trial date for the Initial Trial  
13 in this matter will be continued from September 2, 2005, until no earlier than September 12,  
14 2005.

15 NOW, THEREFORE, the parties to this Stipulation and Proposed Order, by and  
16 through their undersigned counsel, hereby memorialize the following stipulation:

- 17 1. The Initial Trial will commence no earlier than September 12, 2005.
- 18 2. The Initial Trial will be limited to:
  - 19 a. Residents of Ventura County, California, who were both: (i) residential  
20 natural gas core ratepayers of Southern California Gas Company during the  
21 time period July 1, 2000 to July 31, 2001; and (ii) residential electricity  
22 ratepayers of Southern California Edison Company during the time period  
23 July 1, 2000 to August 6, 2003 (collectively "Ventura Residential Sub-  
24 Class"); and
  - 25 b. Residents of California who were electricity residential ratepayers of  
26 Southern California Edison Company during the time period July 1, 2000  
27

1 to August 6, 2003, except Residents of Ventura County ("Remaining  
2 Edison Residential Customers Sub-Class.")

- 3 3. The Ventura Residential Sub-Class will be defined as a separate and distinct sub-  
4 class pursuant to California Rule of Court 1855(b) prior to the commencement of  
5 the Initial Trial that comprises members of larger classes already certified. The  
6 Court will certify the Ventura Residential Sub-Class in advance of the Initial Trial,  
7 without further notice to members of the Ventura Residential Sub-Class (all of  
8 whom are already in larger certified classes). The parties will ask the Court, after  
9 it has reviewed the entire record, to find and order that (1) the use of the sub-class  
10 definition for the Ventura Residential Sub-Class is for case management purposes  
11 and does not reflect a material or adverse change in any class members' rights, and  
12 does not add or subtract anyone from the case, and (2) the Court has looked at the  
13 notice issue and determined that notice is not necessary given the above and given  
14 the prior notice in this case. This certification will be without prejudice to  
15 Defendants' rights on appeal to challenge the appropriateness of any class  
16 certification in the coordinated Natural Gas Antitrust Cases, J.C.C.P., Nos. 4221,  
17 4224, 4226 and 4228. The parties' intent in creating the Ventura Residential Sub-  
18 Class is to create a sub-class of plaintiffs whose claims will be finally resolved by  
19 the Initial Trial such that following trial and any post-verdict motions a final  
20 judgment can be entered as to the Ventura Residential Sub-Class claims and that  
21 such judgment would be appealable consistent with section 904.1 of the Code of  
22 Civil Procedure.
- 23 4. The Remaining Edison Residential Customers Sub-Class will be defined as a  
24 separate and distinct sub-class pursuant to California Rule of Court 1855(b) prior  
25 to the commencement of the Initial Trial that comprises members of larger classes  
26 already certified. The Court will certify the Remaining Edison Residential  
27 Customers Sub-Class in advance of the Initial Trial, without further notice to  
28



1 members of the Remaining Edison Residential Customers Sub-Class (all of whom  
2 are already in larger certified classes). The parties will ask the Court, after it has  
3 reviewed the entire record, to find and order that (1) the use of the sub-class  
4 definition for the Remaining Edison Residential Customers Sub-Class is for case  
5 management purposes and does not reflect a material or adverse change in any  
6 class members' rights, and does not add or subtract anyone from the case, and (2)  
7 the Court has looked at the notice issue and determined that notice is not necessary  
8 given the above and given the prior notice in this case. This certification will be  
9 without prejudice to Defendants' rights on appeal to challenge the appropriateness  
10 of any class certification in the coordinated Natural Gas Antitrust Cases, J.C.C.P.,  
11 Nos. 4221, 4224, 4226 and 4228. The parties' intent in creating the Remaining  
12 Edison Residential Customers Sub-Class is to resolve finally the electricity claims  
13 of this sub-class, even though the underlying gas claims of the Remaining Edison  
14 Residential Customers Sub-Class will not be litigated or resolved in the Initial  
15 Trial. The parties intend and agree, however, that any judgment entered following  
16 the jury's verdict in the Initial Trial concerning the Remaining Edison Residential  
17 Customers Sub-Class would be interlocutory, would be stayed, and not subject to  
18 execution or to appeal pursuant to section 904.1 of the Code of Civil Procedure  
19 until such time as the underlying gas claims of the members of this sub-class are  
20 finally resolved. Specifically, members of the Remaining Edison Residential  
21 Customers Sub-Class are also members of other certified classes with respect to  
22 their claims of damage suffered in the form of higher natural gas bills. Any  
23 judgment following a jury verdict on the Initial Trial would not resolve the amount  
24 of such separate natural gas damage claim suffered by the members of the  
25 Remaining Edison Residential Customers Sub-Class, if any. Such claims will be  
26 addressed and resolved by the resolution of the claims of other certified classes of  
27 which the members of the Remaining Edison Residential Customers Sub-Class are  
28

1 also members. Proceedings to resolve such additional claims will not commence  
2 until after full exhaustion of all rights to seek and obtain direct appellate review of  
3 a final judgment with respect to the Ventura Residential Sub-Class.

- 4 5. Evidence as to liability, causation and damages for the Ventura Residential Sub-  
5 Class and the Remaining Edison Residential Customers Sub-Class will be  
6 presented at the Initial Trial prior to any deliberation by the jury. Jurors will then  
7 participate in a single deliberation to attempt to reach a verdict as to liability,  
8 causation and damages, if any, with respect to the Ventura Residential Sub-Class,  
9 and the Remaining Edison Residential Customers Sub-Class. With respect to  
10 electricity damages, the jury will return a single verdict for the total of the damages  
11 for residential electricity customers served by Edison. If the parties can agree prior  
12 to the jury commencing deliberation, the jury will then be asked to apply a  
13 particular percentage to the total damage amount, if any, awarded to residential  
14 electricity customers served by Edison in order to allocate the electricity damage  
15 award between the Ventura Residential Sub-Class and the Remaining Edison  
16 Customers Sub-Class. If the parties are unable to agree prior to the jury  
17 commencing deliberation, the parties agree that the Court will determine the  
18 allocation of the total damage amount awarded to residential bundled electricity  
19 customers served by Edison as between the Ventura Residential Sub-Class and the  
20 Remaining Edison Residential Customers Sub-Class.
- 21 6. The Court shall only enter final judgment as to the Ventura Residential Sub-Class,  
22 and such judgment shall be subject to immediate appeal by the parties following  
23 exhaustion of any post-trial motions. It is the intent of the parties that as a result of  
24 the Initial Trial of the Ventura Residential Sub-Class claims, there be a final,  
25 appealable judgment entered. The Court shall enter an interlocutory judgment as  
26 to the electricity claims of the Remaining Edison Residential Customers Sub-  
27 Class, but such interlocutory judgment shall be stayed and the Court will not enter  
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1 a final judgment after the verdict in the Initial Trial as to any other plaintiffs,  
2 including but not limited to the Remaining Edison Residential Customers Sub-  
3 Class. A final judgment consistent with CCP 901.4 shall not be entered as to the  
4 Remaining Edison Residential Customers Sub-Class until the underlying natural  
5 gas claims of the members of the Remaining Edison Residential Customers Sub-  
6 Class have also been adjudicated in separate, later proceedings, after exhaustion of  
7 all rights to seek and obtain direct appellate review from any final judgment from  
8 the Initial Trial as to the Ventura Residential Sub-Class.

- 9 7. Subject to further order of the Court, all proceedings in this action shall be stayed  
10 pending exhaustion of all rights to seek and obtain direct appellate review of the  
11 final judgment as to the Ventura Residential Sub-Class entered as a result of the  
12 Initial Trial.
- 13 8. After receiving the jury's verdict in the Initial Trial, prior to entry of judgment, the  
14 Court will resolve issues regarding Plaintiffs' Unfair Competition Law claims, any  
15 offsets or any other basis for challenging or reducing the verdict, and any other  
16 matters appropriately raised by the parties necessary to enter a final judgment as to  
17 the Ventura Residential Sub-Class claims and an interlocutory judgment as to the  
18 Remaining Edison Residential Customers Sub-Class' electricity claims.
- 19 9. If the Initial Trial proceeds to a judgment, all parties to this Stipulation and  
20 [Proposed] Order (whether or not participating in the Initial Trial) agree to be  
21 bound by any judgments, rulings, and determinations in the Initial Trial as to  
22 common issues that become final after exhaustion of all appeals, to the extent that  
23 Defendants are bound by such judgments, rulings, and determinations pursuant to  
24 the doctrines of collateral estoppel and/or res judicata. Defendants agree that they  
25 will not challenge in subsequent trials the amount of damages, if any, from the  
26 jury's verdict in the Initial Trial as to the Remaining Edison Electricity Customers  
27 Sub-Class, but Defendants' agreement only becomes effective after full exhaustion  
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1 of all rights to seek and obtain direct appellate review from a final judgment, if  
2 any, as to the Ventura Residential Sub-Class claims and only applies if the  
3 damages award is upheld on appeal. If for any reason the Initial Trial of the  
4 Ventura Residential Sub-Class fails to produce an immediately appealable final  
5 judgment pursuant to section 904.1 of the Code of Civil Procedure, the Parties  
6 hereto agree and understand that Plaintiffs may not execute on or seek to enforce  
7 or collect any judgment in their favor on the Ventura Residential Sub-Class claims  
8 until after there is an appealable final judgment pursuant to Section 904.1 of the  
9 Code of Civil Procedure and full exhaustion of all rights to seek and obtain direct  
10 appellate review of the Ventura Residential Sub-Class Claims.

11 10. The Plaintiffs set forth in the Second Amended Master Complaint, including all  
12 individual and class Plaintiffs, who are not among the Plaintiffs included in the  
13 Ventura Residential Sub-Class and Remaining Edison Residential Customers are  
14 allowed to participate through their counsel in the Initial Trial, as though their  
15 clients were actual litigants, by acting in conjunction with counsel for the Ventura  
16 Residential Sub-Class and Remaining Edison Residential Customers Sub-Class,  
17 who are Plaintiffs in the Initial Trial.

18 11. The Plaintiffs agree that the maximum amount of any bond required by the  
19 Defendants to perfect any appeal in this action will not exceed \$75 million or any  
20 lesser amount determined by the Court.

21 12. Nothing in this Stipulation limiting the Initial Trial to the Ventura Residential Sub-  
22 Class and the Remaining Edison Electricity Customers Sub-Class is intended in  
23 any way to limit the right of any party hereto to introduce otherwise relevant and  
24 admissible evidence at the Initial Trial on common issues with respect to the  
25 residential class members of liability, causation and fact of damages that otherwise  
26 would be admissible in a trial of the already certified classes, subject to the  
27 objection or motion *in limine* of any party and the resolution of any such  
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1 objections or motions by the Court. Plaintiffs, however, agree that they will not  
2 call as a witness any class member who is not a member of the Ventura Residential  
3 Sub-Class or the Remaining Edison Residential Customers Sub-Class to testify in  
4 the Initial Trial. The Parties further hereto agree that any specific and unique  
5 issues of liability, causation and damages, as distinct from general, common issues  
6 relating to liability, causation and damages, if any, with respect to all natural gas  
7 and electricity ratepayers in Northern California shall not be part of the Initial Trial  
8 and no evidence with respect to specific and unique issues of Northern California  
9 liability, causation and damages, if any, will be presented during the course of the  
10 Initial Trial. The Parties hereto agree that these specific and unique Northern  
11 California issues will be addressed, if necessary, in a future trial. Nothing in this  
12 Stipulation is intended to limit in any way the right of any party hereto to object to  
13 otherwise inadmissible evidence.

14 13. The parties will meet and confer as to the issues set forth in their respective Status  
15 Conference Statements that are not resolved by this Stipulation.

16 Dated: September 6, 2005

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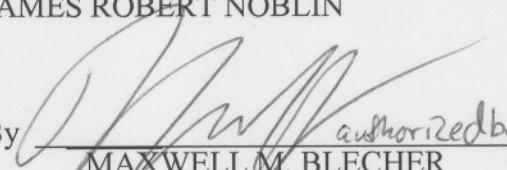
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15 Dated: SEP 08 2005

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